

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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CRAIG MOSKOWITZ and BARBARA MOSKOWITZ,  
each on their own behalf, and as  
parents on behalf of their minor  
child, S.M.,

**ORDER ADOPTING REPORT  
AND RECOMMENDATION**

Plaintiffs,

20-CV-1659 (KAM) (SIL)

-against-

GREAT NECK UNION FREE SCHOOL  
DISTRICT, THE BOARD OF EDUCATION OF  
THE GREAT NECK UNION FREE SCHOOL  
DISTRICT, DANA SLACKMAN, DR.  
GABRIELLA DUKE, KATE MUGNO, ROBIN  
TRICHON, DR. ANTHONY IACOVELLI,  
LUCIANA BRADLEY, and SARA GOLDBERG,  
each Individually, and in their  
respective official capacities,

Defendants.

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**MATSUMOTO, United States District Judge:**

Plaintiffs Craig Moskowitz and Barbara Moskowitz, on  
their own behalf and on behalf of their minor child, identified  
for the purposes of litigation as "S.M." (collectively,  
"Plaintiffs"), commenced this action on April 1, 2020, against  
Defendants Great Neck Union Free School District (the  
"District"), the Board of Education of the Great Neck Union Free  
School District (the "Board"), Dana Slackman, Dr. Gabriella  
Duke, Kate Mugno, Robin Trichon, Dr. Anthony Iacovelli, Luciana  
Bradley, and Sara Goldberg (collectively with Slackman, Duke,

Mugno, Trichon, Iacovelli, and Bradley, the "Individual Defendants," and with the District and the Board, "Defendants"). (See ECF No. 1, Compl.) Plaintiffs alleged violations of: Section 504 of the Rehabilitation Act of 1983 ("Section 504"); the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*; and 42 U.S.C. § 1983 ("Section 1983") with respect to Plaintiffs' Due Process, Equal Protection, and Fourth Amendment rights for the 2017-2018 and 2018-2019 school years, as well as related state law claims for false imprisonment, intentional infliction of emotional distress, negligent infliction of emotional distress, negligence, negligent training and supervision, negligent performance of a governmental function, and assault and battery. (See Compl.; see also R. & R. at p. 2.) On December 11, 2020, Defendants filed their motions to dismiss the complaint for lack of subject matter jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(1) and failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6), which Plaintiffs opposed. (See ECF No. 34, Defs.' Mot. to Dismiss; see also ECF No. 35, Def. Slackman Mot. to Dismiss; ECF No. 37, Pls.' Opp.) Defendants filed a reply in support of their motion to dismiss. (See ECF No. 41, Defs.' Reply Mem. of Law.)

On April 1, 2021, the Court referred this matter to United States Magistrate Judge Steven I. Locke for a Report and

Recommendation. (See Order Referring Mot., Apr. 1, 2021.) On August 4, 2021, Judge Locke issued a Report and Recommendation recommending that the Court grant in their entirety Defendants' Motion to Dismiss for Failure to State a Claim and Defendant Dana Slackman's Motion to Dismiss for Failure to State a Claim, recommending specifically that: (1) Plaintiffs' Section 504 and ADA claims against the District and the Board be dismissed without prejudice until all administrative remedies are exhausted; (2) Plaintiffs' Section 1983 claims against the District and the Board under the theory of *Moneill* liability be dismissed without prejudice, with leave to replead consistent with the recommendation; (3) Plaintiffs' Section 504, ADA, and Section 1983 claims against the Individual Defendants be dismissed with prejudice, as a matter of law; and, (4) Plaintiffs' state law claims be dismissed without prejudice. (See ECF No. 42, R. & R. at p. 47.) The Report and Recommendation notified the parties of their right to file written objections within fourteen (14) days of receipt via ECF of the Report and Recommendation. (*Id.* at p. 47.) The parties were thus granted until August 18, 2021, to timely file any objections to the Report and Recommendation. (See Docket Order, Aug. 4, 2021.) No objections have been filed.

Where no objections to a Report and Recommendation are made, a district court reviews the Report and Recommendation for

clear error. See *Johnson v. Pep Boys-Manny, Moe & Jack of Delaware, Inc.*, No. 17-cv-00056 (AMD) (JO), 2017 WL 4402453, at \*1 (E.D.N.Y. Oct. 2, 2017) (citing *Mt. Hawley Ins. Co. v. Abraham Little Neck Dev. Grp., Inc.*, No. 09-cv-3463 (PKC) (ARL), 2015 WL 867010, at \*1 (E.D.N.Y. Feb. 27, 2015) (reviewing Report and Recommendation for clear error where no objections were made). Upon a careful review of the record and Judge Locke's thorough, well-reasoned Report and Recommendation, the Court finds no clear error and hereby affirms and adopts the Report and Recommendation in its entirety as the opinion of the Court.

Accordingly: (1) Plaintiffs' Section 504, ADA, and 1983 claims against the District and the Board are dismissed without prejudice, provided that Plaintiffs' first timely exhaust all administrative remedies; (2) Plaintiffs' Section 1983 claims against the District and the Board under the theory of *Monell* liability are dismissed without prejudice, with leave to replead consistent with Judge Locke's Report and Recommendation; (3) Plaintiffs' Section 504, ADA, and Section 1983 claims against the Individual Defendants are dismissed with prejudice as a matter of law; and, (4) Plaintiffs' state law claims are dismissed without prejudice to refile. Defendants' motions to dismiss are GRANTED in their entirety.

Plaintiffs are granted thirty (30) days to file an amended complaint. Failure to do so will result in an entry of

judgment in favor of Defendants.

**SO ORDERED.**

Dated: August 31, 2021  
Brooklyn, New York

/s/ Kiyo A. Matsumoto  
Kiyo A. Matsumoto  
United States District Judge